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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the Peace and Justice Service

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1988/4.

[25 October 1994]

I. INTRODUCTION

This document was prepared by a number of social organizations, including the Argentine Workers' Congress, the National Centre for Retired Persons and Pensioners/ATE (State Workers' Association), the Argentine University Federation, the Association of Labour Lawyers, the Regional Programme of Economic and Social Research, the American Association of Jurists, and the Latin American Peace and Justice Service.* We are submitting it to the Committee in recognition of its responsibility to supervise implementation of the Covenant and because we consider it important for society to participate in the management and monitoring of the realization of our rights.

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* The present document is in fact a summary of a fuller report which we are submitting to the Committee, together with a number of documents and additional complaints.

In our view, the Argentine Government is not fulfilling its obligations under the Covenant. There is evidence of this in the deterioration of the situation with regard to the economic and social rights of a large proportion of the population and the obvious abandonment by the State of its role as guarantor of these rights:

Despite the increase in the gross domestic product, there is continuing impoverishment and increasing unemployment;

Out of a population of 32 million, more than 5 million people have difficulty in ensuring their rights to food, housing, health and education;

Thirty-seven per cent of the economically active population are currently unemployed or underemployed or have no job security;

Poverty and social inequity have a disproportionate effect on certain sectors of the population, including retired persons or pensioners, minors, women and indigenous persons;

There is also an obviously disproportionate impact on the residents of the conurbation of Buenos Aires and the interior of the country as a whole;

The Government's policies tend to deny citizens the rights they have acquired, these policies being reflected in retrograde legislation, arbitrary enforcement of such legislation, inefficiency and corruption in the use of public property, and impunity.

The report submitted by the Argentine Government** does not follow the guidelines for its presentation. In addition to omitting two of the articles of the Covenant relating to the right to social security and to an adequate standard of living, respectively, it fails to include an accurate description of the actual situation in Argentina or to evaluate achievements and the obstacles encountered in implementing the Covenant. Furthermore, the Government has made no provision for any agency to publicize the report or for any internal discussion on it.

For these reasons, we have contacted the Committee in the hope that its conclusions and recommendations will help to improve State policies in relation to these rights.

II. GENERAL COMMENTS

The socio-economic background

The neo-liberal policies pursued since the military coup of 1976 have led, on the one hand, to the opening-up of the economy and indebtedness and, on the other, to a decline in industrialization, the concentration of wealth and the exclusion of the most disadvantaged sectors of the population. The

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** E/1990/5/Add.18.

consequences of these policies have been a decline in real wages and an upsurge in underemployment and unemployment. The demands of the international financial institutions have resulted in a gradual reduction in the level of State investment. The State is abandoning its role as guarantor of collective rights and its duties of distribution and regulation in the face of the untrammelled play of market forces.

Economic stability, which the present Argentine Government proclaims as its main achievement, was not achieved by disciplining the major economic groups, but through the sacrifice of the great majority of the population. In a recent report, the World Bank admitted that there are not many countries in the world where the privileged sectors have benefited to such an extent from the unequal distribution of wealth. The richest 20 per cent of the Argentine population account for 51.6 per cent of the national annual income, whereas the poorest 20 per cent account for less than 5 per cent. 1/

Social inequality goes hand in hand with worsening regional inequality. Almost without exception, the main economic and social indicators reveal that the process of segmentation and exclusion has accelerated, exacerbating the country's sharp division between those who have been integrated into the new model and those who have not. The former live mostly in the capital; the second, who constitute the vast majority, are also concentrated in the capital, but disproportionately so in the Buenos Aires conurbation and in the interior. In the past year, this situation of backwardness and inequality has given rise to considerable social agitation and unrest all over the country.

ARTICLE 6 - RIGHT TO WORK

In Argentina, the right to work has been restricted by the current economic policy. According to the latest official statistics (for May 1994), the growth of overt unemployment (10.8 per cent) is accompanied by a drop in the rate of activity (from 41.5 per cent to 41.1 per cent), together with a further increase in underemployment (10.2 per cent). Including persons who have no job security, 37 per cent of the economically active population - 5 million persons - are facing labour problems.

The employment generated by the current economic plan stems from a labour policy that tends to replace permanent workers by temporary workers.

Argentine labour legislation since 1989 has not sufficiently protected workers' rights, but rather has legalized situations of inequality, thereby violating agreed international standards, with the aim of reducing labour costs.

The National Employment Act (No. 24,013) has not helped to create real jobs. On the contrary, it has introduced into the labour relations system methods of hiring personnel which are characterized by the temporary nature of the jobs, the absence of any compensation for dismissal or the reduction of such compensation to negligible amounts, and the lowering of employers' social security contributions.

ARTICLE 7 - RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

Within a framework of high rates of unemployment and underemployment, the Government's restructuring policies have made wages the principal adjustment variable. The purchasing power of the average wage fell from a base of 100 in January 1984 to 57 in 1990, rising to 64 in 1993. 2/ In April 1991, when the Government's convertibility plan began, the average take-home pay of the industrial worker covered 96 per cent of the basic family shopping-basket, whereas by February 1994 it covered only 51 per cent.

Decree No. 1334/91 and Decree No. 470/93, by modifying collective bargaining procedures, make it possible to consolidate a regressive policy of income distribution which is contrary to the principle of fair remuneration embodied in the Covenant, using productivity as the basis for determining remuneration instead of the needs of the worker.

Similarly, the Collective Bargaining in Public Employment Act was promulgated early in 1993, but up to now the Argentine Government has continued to shirk its obligation to negotiate with its workers.

As regards workers' health, since Act No. 24,028 was adopted in 1991 there has been a decline in protection against occupational diseases and industrial accidents. At present, another set of regulations is planned which will aggravate the lack of protection since it will establish a system of mandatory insurance administered by private commercial entities, and not by a social security system, as required by article 9 of the Covenant.

The limitation of the working day and the right to rest are provided for in Act No. 11,554 and Act No. 20,744 concerning labour contracts. However, the planned amendments to the Framework Agreement for Productivity and Employment, which has been signed by one sector of the trade union movement and by some employers and is being promoted by the Executive, will result in repudiation of this protection because they seek to give the employer the unilateral power to determine both the duration and the scheduling of working hours.

ARTICLE 8 - TRADE UNION RIGHTS

The right to form trade unions is hampered by Argentine trade union legislation which is at variance with international provisions. This is the case of the Argentine Workers' Congress (CTA), which, 16 months after requesting recognition as a trade union, is still being denied recognition by the Ministry of Labour. Furthermore, trade unions that oppose the Government are being victimized by policies which prevent them from operating freely, such as the improper withholding of contributions reported by two unions in the province of Corrientes.

With regard to the right to strike, in March 1994 the ILO Committee on Freedom of Association took the view that Presidential Decree No. 2,184/90 set limits on that right when it granted the Ministry of Labour discretionary

power to decide on the essential services to be performed after a call to strike has been issued. Despite that opinion, the Argentine Government declared that the strike ordered by the CTA and the MTA on 2 August 1994 was illegal.

ARTICLE 9 - RIGHT TO SOCIAL SECURITY

The report of the Argentine Government completely omits this article. Regarding the situation of non-working persons, information from the National Social Security Administration for June 1994 indicates that 70 per cent of retired persons and pensioners receive an income of the order of 150 pesos a month, whereas the cost of the family shopping-basket is calculated at 900 pesos. 3/

Against this background, the recently enacted social security reform (Act No. 24,241) was the culmination of the Government's abandonment of its obligations in this area, the existing social security system being replaced by a mixed system that includes a private capitalization option and delivery system. 4/ Its consequences include the following:

A drastic reduction in the funds available for the payment of pensions to present and future pensioners;

The non-participation of the currently employed and retired workers in the administration of the funds;

The retirement age for employees has been raised by five years;

There is no guarantee that pensioners will receive 82 per cent of their last salary adjustable for inflation since the amount of benefits now depends on a combination of variables, including the financial success of the institutions administering retirement and pensions funds.

For these reasons, the retired persons' and pensioners' organizations are advocating the repeal of this Act and its replacement by a new law that will reinstate a joint delivery system.

Most of the programmes designed to deal with the problems of the elderly are either not being implemented or do not reach their target population. The only palliative measure that the State has succeeded in implementing has been the granting of subsidies (ridiculously small) to those retired persons whose only income is equivalent to the minimum wage.

Furthermore, the right to social security of workers who are employed is being infringed because of the serious crisis in the welfare services. In addition to the substantial decline in the resources of these services, caused by the growing unemployment and the drop in wage levels, there are in many cases policies of misappropriation of funds and corruption which leave their supposed beneficiaries with no protection.

As for the national unemployment insurance, it offers only relative protection since in 1993 only about 11 per cent of all unemployed persons benefited from it.

Special protection for the indigenous peoples

In spite of the provisions of Act No. 23,302/85, the indigenous communities are not given the necessary protection since the Act has not been effectively implemented. The Government's failure to deposit the instrument of ratification of ILO Convention No. 169, notwithstanding its approval by Parliament, has prevented its implementation and supervision.

ARTICLE 10 - PROTECTION OF FAMILIES, MOTHERS AND CHILDREN

Family planning and protection of mothers

The Government's report sets out Argentina's interpretation of family planning, stating that this is a matter which concerns parents and no one else, and that the State should merely encourage responsible parenthood. 5/ Attempts to legislate on family-planning policies over the past 10 years have had little impact. Birth control continues to be inaccessible to most women.

The absence of a government policy in this area is directly related to the large number of abortions recorded in Argentina (over 350,000 per annum). Under Argentine legislation termination of pregnancy is a criminal offence; in most cases therefore, it is performed at great risk. Abortion has thus become the main cause of deaths of mothers (100 for every 100,000 abortions), the most needy women being disproportionately affected.

According to official data of May 1994, the under-20 age group has the highest unemployment rate compared to the overall rates (30.5 per cent as against 9.5 per cent in the same month). Unemployment and underemployment among young persons have given rise to a very rapid increase in social tension. According to a judicial report issued in 1993, the number of cases coming before the juvenile courts has increased by about 135 per cent over the past 20 years. 6/

ARTICLE 11 - RIGHT TO AN ADEQUATE STANDARD OF LIVING

The Government also omitted this article from its report to the Committee.

The official data indicate that, compared with 1980, the degree of social inequality has increased significantly, as has the number of persons who have difficulty exercising their fundamental rights to housing, food, health and education. According to data from the National Institute of Statistics and Censuses (INDEC), in October 1993 about 13.1 per cent of households - representing more than 5.5 million persons - had incomes below the poverty line. The number of persons classed as destitute was 1.7 million, or 3.6 per cent.

Housing

Paragraph 365 of the report of Argentina recognizes that there is no specific legislation dealing with the founding of a family. Using the 1991 national census as a basis, the office of the Under-Secretary for Housing

calculates that 15 million persons, or 47.5 per cent of the population, live in substandard housing, and only 37 per cent of occupied private dwellings have running water and sewerage.

The housing shortage worsened between 1980 and 1991 because the number of families occupying substandard housing increased; some were living in overcrowded conditions, 7/ while others were occupying dwellings illegally. 8/

The Government's response to the housing problems has been to increase the availability of private loans, but the loans offered are aimed at the middle-income sectors who are not suffering serious housing problems. On the other hand, in recent months there have been many evictions in the most needy sectors, such as that of the 200 families who had been living in the Bodega Giol in the capital. Their situation has still not been resolved, despite official promises.

ARTICLE 12 - RIGHT TO HEALTH

The recurrence of cholera, measles, meningitis and tuberculosis is due to the deterioration in general standards of nutrition, the absence of basic health measures and shortcomings in the infrastructure of health care centres. Water pollution is responsible for 80 per cent of infant mortality.

Mothers and children in the most impoverished sectors who have no social welfare coverage lack any form of protection. This situation has resulted in higher rates of disease and deaths in children under one year of age, low birth weights and maternal mortality. 9/ Thirty per cent of pregnant women go to hospital only to give birth.

Public health system

Under the current system, the State has been gradually relinquishing its position as direct provider of public health, as well as its authority to regulate a health system, and over time this has caused increasing commercialization of the system and high levels of social inequality.

The operation of the public hospitals is seriously affected by the lack of equipment and proper hospital infrastructure, the very low wages, staff cut-backs, lack of training and poor hygiene. There are still, for example, large psychiatric hospitals with more than 1,000 patients and where two nurses have to take care of 100 patients per shift. 10/

Under the health care system reform plan promoted by the Government, a user with no social security coverage or pre-paid medicine will pay for the service and only proven welfare cases will receive free care. As far as prevention measures are concerned, since there is no comprehensive health policy, either nationally or locally, the prevention campaigns are not followed through. 11/

AIDS prevention

The Argentine Government's report includes a description of the goals and activities of the HIV virus infection control and prevention programme. Its ambiguous wording shows the considerable extent of improvization on the subject.

Act No. 23,798, adopted in 1990, prohibits discrimination and promotes prevention measures and the care of persons with the AIDS virus. However, the manner in which AIDS is dealt with is typical, since the existence of the legal framework does not mean that it is enforced. Despite that fact, and the recent statistics described as alarming by the adviser to the Ministry of Health for the national programme to combat human retroviruses and AIDS, the Government has set up no national campaign against AIDS. 12/ Nor has a related study been carried out on hospital infrastructure.

Right to a healthy environment

The country's main environmental problem is poverty. Furthermore, there is no national legislation which provides for environmental offences or establishes the criminal responsibility of persons who commit such offences. Evidence of this is the fact that every year 300,000 tons of toxic waste are discharged into the River Plate, on whose banks 6 million people live. The main source of pollution is the 7,300 industries which dump their waste into the river; only 20 per cent of them are inspected.

III. QUESTIONS FOR THE ARGENTINE GOVERNMENT

Bearing in mind the functions of the Committee and the purpose of the submission and consideration of government reports, in accordance with articles 16 and 17 of the Covenant, we suggest that the Committee should ask the Argentine Government the following questions.

Article 6

1. Considering that the legislative measures have had virtually no impact on unemployment, does it intend to continue pursuing those measures and, if so, on what basis?

2. Taking into account the emergency employment situation described above, what active employment policies does it propose to pursue throughout the country and how does it explain those policies within the framework of the Government's overall economic policy?

Article 7

3. What mechanisms or provisions does it envisage in order to restore collective bargaining with full rights and to achieve fair remuneration, in keeping with its obligations under the Covenant and other international instruments?

4. Does it envisage any mechanisms or bills which will extend the concepts of Decree No. 470, regarding persons authorized to engage in collective bargaining, to leaders representing the bargaining levels elected by the parties?

5. On what basis have the levels of protection against occupational diseases been lowered and how does the Government justify the failure to comply with the relevant international standards?

6. What measures does it envisage taking in order to guarantee the non-delegable powers of the Government to require compliance with industrial safety regulations?

7. What legislative measures does it intend to apply in order to guarantee the limitation of the working day, and daily, weekly and annual rest?

8. Does it intend to adopt any mechanism to restrict the widespread use of overtime?

Article 8

9. What measures does it envisage in order to bring the trade union laws into line with international standards?

10. What are the obstacles to the registration of the Argentine Workers' Congress as a trade union body. The Government should be urged to proceed to register it.

11. On what grounds did the government of the province of Corrientes arbitrarily discontinue the free operation of the trade unions? The provincial government should be urged to repeal the decrees in question.

Article 9

12. How does the Argentine Government propose to rectify the shortcomings in the social welfare system?

13. Given the current situation in the social welfare services, especially in the PAMI, which serves retired persons, what action does it propose to take in order to solve the problem of benefits and to guarantee the right to health and social security?

14. Under the Federal Fiscal Pact, the provincial pension funds will now come under the control of the central government. In this situation, how does the Government propose to guarantee the right to participate in the administration of the funds and ensure that their earnings are safeguarded for the purposes of social security?

15. Why must pensioners who are working contribute to the unemployment fund?

16. What is preventing deposit of the instrument of ratification of ILO Convention No. 169?

Article 10

17. What measures does the Government propose to adopt in order to make possible social participation in, and control of the various programmes referred to above?

18. In the light of the problem of the abduction of, and trafficking in, children, what measures is the Government taking to control the problem and punish the persons responsible?

19. What has been the impact of the deregulatory measures adopted in Act No. 24,013 and the vocational training programmes on youth unemployment and underemployment?

Article 11

20. What fiscal measures does the Government propose to take in order to reverse the growing inequality in the distribution of the national income?

21. Given the importance of school canteens in meeting the nutritional needs of children, how does the Government propose to guarantee the necessary resources for their operation and efficient use?

22. What measures is the Government taking to assist the poorest sectors in obtaining adequate housing? What is the budget allocated to this item and how is its execution controlled?

23. What measures have been taken to restore to the families evicted from the Bodega Giol their right to housing and to prevent other evictions?

Article 12

25. What measures does the Government propose in order to halt the recurrence and spread of diseases such as cholera, tuberculosis, Chagas' disease and hepatitis B?

26. Given the difficult financial situation of many social welfare institutions and the introduction of the new self-management hospital system, how does the Government propose to ensure that the public receives non-discriminatory health care?

27. How does it propose to guarantee compliance with the law on toxic waste, and with essential standards of hygiene in connection with health workers?

IV. CONCLUSION

Given the regressive situation regarding the realization of the rights protected by the Covenant and the obvious predominance of government policies which tend to accentuate the lack of protection of broad sectors of the population and to exclude them from the processes of management and control of government action, we consider that it is important for the Committee to express its concern to the Argentine Government and to communicate to it any recommendations it deems appropriate. In this connection, we expressly

request the Committee to give consideration to the adoption of specific follow-up measures including a possible verification and evaluation mission to Argentina, which would enable the constructive dialogue between the Committee, the Government and society to be strengthened, with a view to the promotion and protection of those human rights which are at present curtailed.

Notes

1/ In 1974, for Greater Buenos Aires, the richest 20 per cent received 39.5 per cent of income, whereas the poorest 20 per cent received 8.8 per cent (PRIES-Southern Cone based on INDEC data).

2/ The recent World Bank report referred to above shows that the loss in value of the real wage has been relatively greater for the lowest paid wage-earners, and also for the least skilled.

3/ The situation of pensioners and retired persons has been made worse by the cancellation of benefits and exemptions from payment for public utilities which the Government has now placed in private hands. The small dividends obtained from the sale of public enterprises, which originally the Government had promised to use for social welfare, were never allocated to that sector.

4/ It is important to point out that this law obliges anyone who does not expressly state his preference for remaining in the State system to join a private scheme; furthermore, the percentages set by this law for calculating pensions encourage younger persons to opt for the private system.

5/ In the report prepared by the Argentine Government for submission to the International Conference on Population and Development in Cairo in 1994, in the "National report on population", the terms "reproductive rights" and "reproductive health" widely accepted in the international community have been replaced by "responsible reproduction". Through the use of this terminology, individuals are denied the right to reproduce as they wish and the enjoyment of their sexuality for purposes other than reproduction.

6/ Seventy per cent of these cases are brought for theft and robbery, which the experts describe as offences of poverty. Seventy per cent of adults currently imprisoned have previously been committed to juvenile institutions.

7/ According to official data, in the shantytowns the average number of persons per room is 4.8, whereas in the rented rooms of apartment buildings and lodging houses the average is 9.6 persons.

8/ At present, there are reported to be 1,550,000 families who occupy property as illegal tenants.

9/ Of the 15,000 avoidable infant deaths which occur annually in Argentina, 70 per cent are in poor families.

10/ Nevertheless, the Auditor-General has confirmed that in 1993 the Ministry of Health and Social Welfare left 30 per cent of its budget allocation unused on account of alleged inefficiency and poor coordination.

11/ According to a report prepared in 1990 by the Office of the Secretary of State for Health, in Argentina US$ 15 million is lost annually in the treatment of diseases which could be prevented through vaccination campaigns.

12/ These official statistics (Ministry of Health and Social Welfare) show that there have been 4,853 cases of AIDS throughout the country from 1983 to July 1994. It is estimated that by the year 2000, there will be some 30,000 AIDS victims and 300,000 HIV-infected persons.